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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEITH S. MORRIS,

-v-

DECISION AND ORDER
07-CV-0015Sc

THE NEW YORK STATE DEPARTMENT
OF CORRECTION; OFFICER, J. SMITH;
OFFICER, M. CARTER, and OFFICER, J. GRIFFIN,
all of Attica Corr. Fac.,,

Defendants.

Plaintiff Keith Morris, formerly an inmate at the Attica Correctional Facility, has filed this *pro se* action seeking relief under 42 U.S.C. § 1983 (Docket No. 6, Item No. 1)¹ and has requested permission to proceed *in forma pauperis* (Docket No. 6, Item No. 2). Plaintiff currently has pending in this Court an identical action, *Morris v. New York State Department of Corrections, et al.*, 04-CV-0017A(Sc), which like the instant matter was originally filed in the United States District Court for the Northern District of New York and then transferred to this Court. Both actions allege that the defendants violated his constitutional rights when they used excessive force, including a "stun-gun," on January 3, 2001. Plaintiff has also filed a motion to join (consolidate) this case with 04-CV-0017A(Sc). (Docket No. 7).

¹This action was initially filed in the United States District Court for the Northern District of New York on December 21, 2006, and then transferred to this Court. "Docket No. 6" is the first Docket Entry in this Court, which contains the first four documents filed in the Northern District of New York. Those documents are denoted as "Item Nos."

It appears from the complaint in this matter, and the documents submitted along with it but not docketed, that what plaintiff intended to do by filing this action was to include further allegations or documentary support relating to his claim to monetary damages in 04-CV-0017A(Sc), including a lost wages claim based on the allegation that the injuries he allegedly suffered on January 3, 2001 have hindered his ability to locate work. Therefore, plaintiff's complaint in this action should be construed as an amended or supplemental complaint in the first filed action, 04-CV-0017A(Sc). See Fed.R.Civ.P. 15(a), (d).

Accordingly, plaintiff's request to proceed as a poor person is granted, the complaint in the instant matter is dismissed, pursuant to 28 U.S.C. § 1915(e)(2)(B), as wholly duplicative of 04-CV-0017A(Sc), and the complaint in this action, along with the documents submitted with it, are to be docketed in 04-CV-0017A(Sc) as a motion to amend the complaint. The Clerk of the Court is also directed to take steps to close this action, and to docket this Order and plaintiff's motion for the appointment of counsel and an expert witness (Docket No. 6, Item No. 3) in 04-CV-0017A(Sc).

SO ORDERED.

Dated: FEB. 28, 2007
Rochester, New York


CHARLES J. SIRAGUSA
United States District Judge